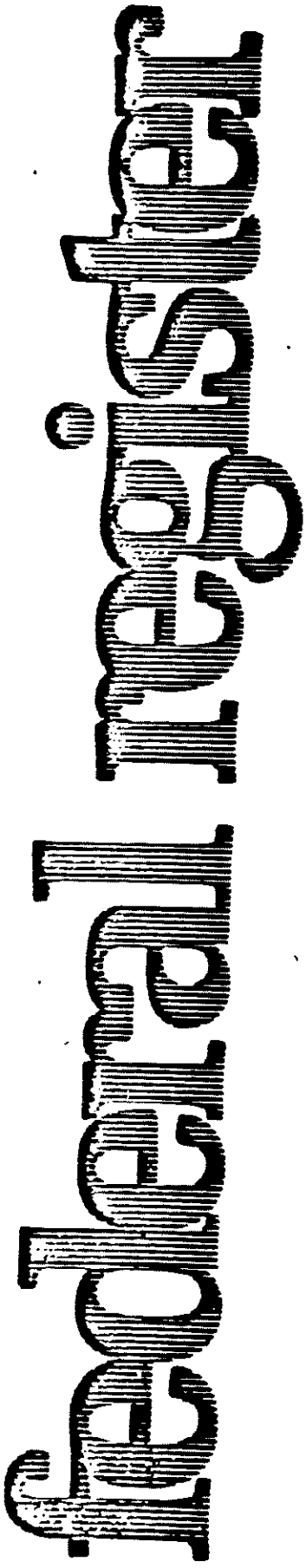

Tuesday
February 23, 1982

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Community Development Block Grants; Urban Development Action Grants; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-82-960]

Community Development Block Grants; Urban Development Action Grants

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule amends regulations governing the Urban Development Action Grant program to reflect changes made pursuant to the Housing and Community Development Act of 1980 and the Omnibus Budget Reconciliation Act of 1981.

EFFECTIVE DATE: March 31, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia Burke, Regions 1 and 4 (202-755-7362), Stanley Newman, Region 2 (202-755-6193), Wally May, Regions 3 and 10 (202-755-0268), William Hammer, Region 5 (Illinois, Indiana, and Minnesota (202-755-6035)), and David Sowell (Michigan, Ohio, and Wisconsin (202-755-6284)), Charles Kendrick, Regions 6 and 8 (202-755-5820), Phil Comeau, Regions 7 and 9 (202-755-6227). (These are not toll-free numbers.) The above persons are located in the Office of Urban Development Action Grants, Department of Housing and Urban Development, 451 7th Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Subpart G of 24 CFR Part 570 contains requirements for Urban Development Action Grants made under Section 119 of Title I of the Housing and Community Development Act of 1974, as amended ("Title I"). Legislative changes to Section 119, dealing principally with Historic Preservation Act requirements, were made by the Housing and Community Development Act of 1980 (the "1980 Amendments"). Additional, broader changes, principally to streamline the application requirements, emphasize the program's primary objective of revitalizing distressed communities through the creation or retention of jobs and the expansion of tax base, and to emphasize rigorous program administration to minimize the amount of Federal dollars needed to stimulate private investment in individual projects, were enacted by the Omnibus Reconciliation Act of 1981 (the "Reconciliation Act").

By this final rule, the Department is implementing the statutory changes and certain other simplifying or clarifying changes to the program requirements and procedures. Because these changes are not being submitted to public comment in order that applicants may enjoy the benefit of the statutory changes without further delay, substantive changes not dictated by the legislative enactment are not being effected at this time. The Department, however, may propose further changes in administratively imposed requirements of the program, by separate rulemaking procedures, in the near future.

In summary, the regulation is amended as follows:

Purpose

Section 570.450 is modified to emphasize economic distress and recovery in accord with the emphasis of the changes made by the Reconciliation Act.

Definitions

In § 570.451 the definition of "small city" is expanded to include Indian Tribes, Guam and Virgin Islands for eligibility purposes, in accordance with the 1980 Amendments. References in § 570.451 to types of projects have been deleted as the criterion of a reasonable balance between types of projects in § 570.459 (criteria for selection) have also been deleted.

Distressed Communities

Reflecting a change in the Reconciliation Act, § 570.452 is modified to provide that, "where available," job lag and unemployment data shall be used to determine distress. Further, definition of Indian Tribe eligibility is also added to the section.

Eligible Applicants

Section 570.453 is modified to delete the reference to the Housing Assistance Plan in accordance with the Reconciliation Act and to clarify the performance expected of the applicant in providing housing.

Other Actions

Section 570.454 is modified to change citizen participation requirements and to delete references to delete paragraph (d) which specified a modified OMB Circular A-95 procedure for applications. The statutory requirement for such a procedure was eliminated by the Reconciliation Act.

Eligible Activities

Section 570.455 has been modified to permit grant assistance for any eligible activity which supports economic recovery, rather than the prior requirement that the activity supports "a commercial, industrial, or neighborhood project." The change is consistent with general language changes made by the Reconciliation Act. Section 119(1) of Title I provides that activities assisted by UDAG grants may include such activities, in addition to those made eligible by Section 105(a) of Title I, "as the Secretary determines to be consistent with the purposes of" Section 119.

Full Applications

In § 570.456 the requirements for a community development plan and a Housing Assistance Plan have been deleted since these requirements were eliminated by the Reconciliation Act. Other changes have been made to reflect legislative language, streamline burdensome requirements, or clarify specific requirements.

Certification requirements specified in the Section have been changed to conform to the Act. Required certifications cover, among other things, compliance with historic preservation, civil rights, relocation and citizen's participation requirements. For the sake of brevity in the regulations and in conformance with the Community Development Block Grant program, other applicable laws have been cited but descriptive material has been deleted.

Criteria for Selection

The selection criteria in § 570.459 have been modified to remove reference to reasonable balance among types of projects, in accordance with a Reconciliation Act change. The primary criterion for project selection is the comparative degree of economic distress among applicants. The substance and order of the other factors have also been changed to reflect Reconciliation Act changes.

Under prior statutory and regulatory provisions, an applicant was required to include, in its application, a statement analyzing the impact of the proposed program on the residents, particularly those of low and moderate income, of the residential neighborhood, and on the neighborhood in which the program is to be located. The Reconciliation Act eliminated this statement as a mandatory application requirement in favor of a certification by the applicant that it carried out such an analysis prior to submission of its application. This requirement is reflected in § 570.454(b) of the revised rule.

Notwithstanding the statutory change, the Department has elected to retain a requirement that a full application contain a statement analyzing the impact of the proposed program "on the residents of any affected residential neighborhood, particularly low- and moderate-income persons and members of minority groups." This impact analysis has been retained in order to better enable the Department to fulfill its obligation to administer its urban development programs in a manner consistent with the requirements of applicable civil rights mandates, including Section 109 of Title I, Title VI of the Civil Rights Act of 1964, and Title VIII of the Civil Rights Act of 1968. It also is designed to match, in major part, the analysis already required to be made by the applicant prior to submission of its application.

Project Closeout

A new § 570.464 is added which is called "project closeout". It refers to the closeout procedures of § 570.512 and to applicable HUD guidelines which are to be followed by recipients in the UDAG program.

The subject matter of this rulemaking action relates to grants, and is therefore exempt from the notice and public comment requirements of Section 553 of the Administrative Procedure Act. As a matter of policy, the Department submits many rulemaking actions dealing with such subject matter to public comment, either before or after effectiveness of the action, notwithstanding the statutory exemption. However, because the substantive changes made by this rule have been limited to changes consistent with legislative amendments, and in view of a Reconciliation Act requirement that the Secretary "as soon as practicable, but not later than January 1, 1982 * * * shall issue such final rules and regulations as the Secretary determines are necessary to carry out" the amendments, The Secretary has determined that notice and public procedure on this rulemaking action are impracticable, unnecessary, and contrary to the public interest, and that the rule should be published for final effect.

In order to afford applicants time to adjust their procedures to the revised regulations, the Department has determined not to waive the 30-day delay of effectiveness provided by the Administrative Procedure Act (5 U.S.C. 553(d)) or to request waiver of the deferral of effectiveness for 30 calendar days of continuous session of Congress provided by Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)). Based on current expectation of Congressional schedules, the rule could become effective as early as March 23, 1982. In order to provide greater advance notice and certainty, the Department has determined that the final rule should become effective March 31, 1982.

Pursuant to Section 308(c) of the Reconciliation Act, the amendments to Section 119 of Title I made by the Reconciliation Act will become effective upon the effective date of this final rule.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 19, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying (at a cost of ten cents per page) during regular business hours in the Office of the Rules Docket Clerk at the address listed above.

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities.

The Department's review of the existing Subpart G regulation was listed as Item D)15 (CPD-36-81) in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41706) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The program number for Urban Development Action Grants in the Catalog of Federal Domestic Assistance is 14.221.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Accordingly, the Department amends Part 570, Subpart G to read as follows:

Subpart G—Urban Development Action Grants

§ 570.450 Purpose.
§ 570.451 Definitions.
§ 570.452 Distressed communities.
§ 570.453 Eligible applicants.
§ 570.454 Other actions which must be taken prior to submission of a full application.
§ 570.455 Eligible activities.
§ 570.456 Ineligible activities and limitations on eligible activities.
§ 570.457 Relocation and land acquisition.
§ 570.458 Full applications.
§ 570.459 Criteria for selection.
§ 570.460 HUD review and action on applications.
§ 570.461 Post preliminary approval requirements.
§ 570.462 Incurring costs for project activities after preliminary approval.
§ 570.463 Project amendments and revisions.
§ 570.464 Project Closeout.
§ 570.465 Applicability of rules and regulations.
§ 570.466 Specific provisions for cities and urban counties containing pockets of poverty.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart G—Urban Development Action Grants

§ 570.450 Purpose.

(a) The purpose of urban development action grants is to assist cities and urban counties which are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery.

(b) HUD will allocate grant funds throughout the year to ensure that assistance is available for each calendar quarter. Not less than twenty-five percent of the funds made available under this subpart shall be used for small cities.

(c) Specific provisions for cities and urban counties containing Pockets of Poverty are found in § 570.466.

§ 570.451 Definitions.

The following definitions apply only to this subpart:

(a) A "large city" means any metropolitan city pursuant to § 570.3(t) and any city with a population of 50,000 or more.

(b) A "small city" means any city under fifty thousand which is not a central city of a metropolitan area.

(c) A "distressed community" is a city or urban county which meets the criteria in § 570.452.

(d) A "Pocket of Poverty" means a severely distressed area meeting the requirements of § 570.466(a) which is

located in a city or urban county which does not meet the distress criteria of § 570.452. As used in this subpart, a "Pockets of Poverty Community" is a city or urban county which contains a pocket of poverty.

(e) An "eligible applicant" is a city or urban county which meets the eligibility requirements of § 570.453 and either the requirements of § 570.452 on distress or the requirements of § 570.466(a) for Pockets of Poverty.

(f) "Activities" mean all activities of the project, unless otherwise specified.

(g) A "project" means the group of integrally related activities which are to be carried out by the applicant or an agent or agency of the applicant and all public and private participating parties, as listed in the grant agreement.

(h) A "participating party" is any person, firm, corporation, or entity so identified in the grant agreement which has agreed to perform activities.

(i) A "firm private commitment" means the agreement by which the private participating party in the action grant program agrees to perform an activity specified in the application and demonstrates the financial capacity to deliver the resources necessary to carry out the activity, and commits the resources to the project. No project will be considered for funding unless it contains a firm private commitment. Although a firm private commitment need not be legally binding at the time preliminary funding decisions are made, it must be legally binding before action grant funds may be expended. In documenting a firm private commitment, the private participating party must:

(1) specify the authority by which the commitment is made, the amount of the commitment and the use of the funds. If the committed activity or a portion of it is to be self-financed, the private participating party must evidence its financial capability through a corporate or personal financial statement or through other appropriate means. If any portion of it is to be financed through a lending institution, the participant must submit evidence of the institution's commitment to fund the loan;

(2) state the amount and use of the action grant, and the relationship of the action grant to the proposed investment, and the number of net new permanent and construction jobs to be created by the activity;

(3) affirm that its investment is contingent upon receipt of the total action grant or other public money (or a specified portion thereof), include a statement that but for the receipt of the public funds requested, this project would not be built, and state a willingness on the part of the signatory to sign a legally binding commitment upon preliminary approval of the action grant.

(j) A "firm public commitment" means the agreement by which a public participating party in the action grant program agrees to perform the activity specified in the application and commits the necessary resources to the project. No project containing a requirement for other public financing will be considered for funding unless it contains a firm public commitment. Documentation of a firm public commitment will generally take the form of a city or county council resolution or a letter from a federal or state agency stating the amount and purpose of the funding available, and that the funds are committed to the project.

(k) A "legally binding commitment" means a legally enforceable written obligation made by a private or public participating party to complete a specified activity or set of activities which is approved as part of the action grant project.

(l) The "leveraging ratio" is defined as the total amount of firm private commitment generated by the project divided by the amount of action grant funds awarded to the project.

(1) In calculating the amount of firm private commitment, HUD will only consider new investments which are contingent upon the receipt of action grant funds and which are necessary to make a new permanent capital improvement. For example, expenditures for land assembly, new construction or rehabilitation will be included in the calculation of the private commitment for a project. Working capital and inventory will not be included.

(2) A hypothetical example illustrates how the leveraging ratio is derived. A private industry agrees to build a widget factory. The company agrees to put $2 million in equity into the plan ($1 million into the construction of the plant and $1 million into working capital), borrows $5 million in a first mortgage from a bank, and says that but for the receipt of Action Grant funds in the amount of $1 million to be used as a second mortgage, the company will not be able to build this project. The applicant agrees to use $500,000 in community development block grant funds to provide offsite improvements. The leveraging ratio would be obtained by adding the $1 million in capital equity, the $5 million first mortgage, plus the discounted value of the action grant second mortgage which (for the purpose of this example) equals $700,000. The total amount of firm private commitments equals $6.7 million for a 6.7 to 1.0 leveraging ratio. The $1 million of working capital is not counted for purposes of calculating the leveraging ratio. Inventory would likewise be excluded from calculation in the ratio.

§ 570.452 Distressed communities.

(a) *General.* Distressed communities are those cities and urban counties which meet the appropriate criteria of economic distress as specified in this section. Cities participating in the Community Development Block grant program in cooperation with an urban county, as provided in § 570.105, are potential applicants under this subpart if they meet the requirements of this section. Such cities may at the same time continue as cooperating units of government in the urban county's entitlement grant. Towns and Townships, pursuant to § 570.3(f), may apply. Towns and townships which do not qualify under the closely settled requirement of that section may request that the Secretary waive this requirement.

(b) *Minimum standards of economic distress.* (1) From time to time, HUD will publish in Notice form the specific minimum standards of economic distress used in determining which cities and urban counties are potentially eligible applicants for action grant funds. These standards will be derived by using the best and most recent available data for the community as a whole, allowing for comparisons between cities and urban counties of the same size class in the following categories: (i) Percentage of housing constructed prior to 1940, (ii) per capita income change, (iii) percentage of poverty, (iv) population growth lag/decline and, where available, (v) job lag/decline, and (vi) unemployment.

(2) Any city or urban county which no longer qualifies on the basis of distress due to a change in applicable data will have up to two calendar quarters to submit full applications following the announcement of that change. HUD will establish a date by which such applications will no longer be accepted and will publish the date in the Notice.

(c) *Large cities and urban counties.* (1) In order to qualify as distressed communities, large cities and urban counties must meet three of the six currently applicable minimum standards of distress specified in paragraph (b) (1) of this section.

(2) If the city or urban county's percentage of poverty is less than one-half of the HUD established standard, then it must meet four of the six minimum standards.

(d) *Small Cities.* In order to qualify as distressed communities, small cities must meet the minimum standards of economic distress for the categories appropriate to their size class as outlined below.

(1) Cities of less than 25,000 population.

(i) If the percentage of poverty is at least one-half of the HUD established standard the city must meet standards in three of the following four areas:

(A) Percentage of housing constructed prior to 1940.

(B) Per capita income change.

(C) Percentage of poverty.

(D) Population growth lag/decline.

(ii) If the percentage of poverty is twice the HUD established standard, the city must meet only one other minimum standard.

(iii) If the percentage of year-round housing units constructed prior to 1940 is twice the HUD established standard, the city must meet only the poverty standard.

(2) Cities of 25,000 population, but not greater than 50,000 population.

(i) Must meet the minimum standards in three of the following five areas:

(A) Percentage of housing constructed prior to 1940.

(B) Per capita income change.

(C) Percentage of poverty.

(D) Population growth lag/decline.

(E) Job lag/decline.

(ii) If the percentage of poverty is less than one-half of the HUD established standard, the city must meet all four other minimum standards.

(iii) If the percentage of poverty is twice the HUD established standard, the city must meet only one other minimum standard.

(iv) If the percentage of year-round housing units constructed prior to 1940 is twice the HUD established standard, the city must meet only the poverty standard.

(e) *Indian Tribes.* Indian Tribes shall be presumed to meet the minimum standards of distress unless data made available to the Secretary establish that a Tribe's distress is not comparable to that of potentially eligible small cities.

§ 570.453 Eligible applicants.

(a) *Eligibility.* Cities and urban counties which qualify as distressed communities, pursuant to § 570.452 or Pocket of Poverty communities pursuant to § 570.466, by meeting the appropriate distress criteria must be determined eligible in order to submit a full application.

(1) *Pre-application request for a determination of eligibility.* Distressed communities and Pocket of Poverty communities must request a determination of eligibility prior to submission of their first full application. The request for a determination of eligibility must be submitted to the appropriate HUD Area Office on Standard Form 424, as modified by HUD, at least 60 days prior to the deadline for submission of the full application (or at a later time as authorized by the Secretary pursuant to § 570.4). To qualify as an eligible applicant, a city or urban county must meet the requirements of paragraphs (a), (b) and (c) of this section.

(2) *Duration of Eligibility.* Once an applicant has been determined eligible, a preapplication need not be filed again; however, in order to remain eligible, the city or urban county must continue to demonstrate results in providing low- and moderate-income housing and equal opportunity in housing and employment as described in this section. Large cities and urban counties shall submit their most recent EEO-4 form by November 30 each year to the HUD Area Office. Small cities shall submit their most recent EEO-4 forms or recent comparable data by November 30 each year to the HUD Area Office. The Area Office will review this information along with other data concerning results in providing housing and equal opportunity described in paragraphs (b) and (c) of this section received by the Area Office.

(3) *Withdrawal of Eligibility.* Eligibility status may be withdrawn at any time if the distressed community or Pocket of Poverty community fails to continue to demonstrate results in providing housing or equal opportunity.

(b) *Results in Providing Housing.* In order to qualify, the distressed community or Pocket of Poverty community must demonstrate that it has achieved results in providing housing for persons of low- and moderate-income. Among the factors HUD will consider are the number of federally or other assisted housing units provided for low- and moderate-income households especially since 1974, and whether the city has accepted, or taken steps to accept, the housing units made available by HUD.

(c) *Results in Providing Equal Opportunity.* In order to qualify, the distressed community or Pocket of Poverty community must demonstrate that it has achieved results in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups. Among the factors which HUD will consider are: (1) The location and occupancy characteristics of federally or other assisted housing units provided for families, and the extent to which the use of these programs promotes and shows progress in promoting a greater choice of housing opportunity for low- and moderate-income persons in areas outside of low income and minority concentration; (2) whether the distressed community or Pocket of Poverty community is actively engaged in promoting housing choice in all of its neighborhoods through participation in an area-wide affirmative marketing effort, a New Horizons Fair Housing Assistance Project, or other fair housing actions designed to eliminate and prevent discrimination in the private housing market throughout the distressed community's or Pocket of Poverty community's jurisdiction; (3) whether relocation as a result of federally assisted programs has resulted in expanded housing opportunities for minorities outside areas of minority or low-income concentration; (4) whether the distressed community or Pocket of Poverty community is a participating jurisdiction in an approved Housing Opportunity Plan, where such plan includes the community's jurisdiction; (5) whether the distressed community's or Pocket of Poverty community's performance reports to HUD and/or the Equal Employment Opportunity Commission indicate significant progress in hiring, training, and promoting minorities and lower-income persons.

§ 570.454 Other actions which must be taken prior to submission of a full application.

(a) *Citizen Participation.* Prior to submission of a full application, applicant must hold public hearings to obtain the views of citizens, particularly residents of the area in which the proposed activities are to be carried out.

(1) Nothing in these requirements, however, shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the urban development action grant program.

(b) *Impact Analysis.* Prior to submission of a full application, the applicant must analyze the impact of the proposed activities both on the residents, particularly those of low and moderate income, of any residential neighborhood in which such activities are to be carried out and on the neighborhood in which they are to be carried out. (1) Hold public hearings to obtain the views of citizens

(c) *Environmental Assessment.* (1) Cities and urban counties must have a level of clearance finding in accordance with § 58.15(d) of 24 CFR

Part 58. Applications will not be accepted for funding consideration, unless a level of environmental clearance finding is made by the time of submission of the application. HUD encourages applicants requesting joint Federal funding to include the other involved agencies when distributing their notice of assessment.

(2) Cities and urban counties must comply with historic preservation identification and review procedures in accordance with § 570.458(c)(14)(vii). Applicants are encouraged to consult with the State Historic Preservation Officer early in the planning process when a property of historical, archeological, or architectural significance may be involved.

(d) *Flood and Drainage Facilities.* If the project involves flood and drainage facilities, the application must include evidence that the requirements of § 570.807 have been satisfied. That is, the applicant must have submitted a request to an appropriate public agency for funds, received notification of rejection from that agency or notification that the funds are not available for at least 90 days, and the applicant must notify HUD of the results of this request.

§ 570.455 Eligible activities.

(a) Except as specified in § 570.456, grant assistance will be made available for any eligible activity specified in Subpart C which supports economic recovery.

(b) If permissible under State and local law, the applicant may undertake activities outside of the applicant's jurisdiction where the benefits of the project accrue to the applicant.

§ 570.456 Ineligible activities and limitations on eligible activities.

(a) Large cities and urban counties may not use assistance under this subpart for planning the project or developing the application. However, they may use entitlement community development block grant funds for this purpose. Any small city which submits a project application which is selected for preliminary approval and for which legally binding commitments have been approved consistent with the terms of the grant agreement and for which a release of funds pursuant to 24 CFR Part 58 has been issued may devote up to three (3) percent of the approved amount of its action grant to defray its actual costs in planning the project and preparing its application.

(b) Assistance under this subpart may not be used for public services as described in § 570.201(e).

(c) Except as specified herein, no assistance will be provided for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that such relocation does not significantly and adversely affect the level of unemployment or the economic base of the area from which such industrial or commercial plant or facility is to be relocated. However, moves within a metropolitan area shall not be subject to this provision.

§ 570.457 Relocation and land acquisition.

(a) *Application of the Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations at 24 CFR Part 42 (Uniform Relocation Assistance and Real Property Acquisition) apply to the acquisition of real property by any State agency (as defined at 24 CFR 42.85) for a project assisted under this subpart and to any displacement that results from such acquisition. More specific instructions about the applicability of the Uniform Act are contained in § 570.602(a).

(b) *Displacement not subject to the Uniform Act.* The provisions of this paragraph apply to activities not subject to the Uniform Act. HUD has determined that requirements identical to those set forth at 24 CFR Part 42, as modified by the following provisions of this paragraph, shall apply to each tenant (not an owner-occupant) who occupies the site of an activity.

(1) *Issuance of notice to residential tenant.*

(i) Within 30 days after preliminary funding approval is announced or at such later date agreed to by HUD, the applicant shall issue each residential tenant either a notice of displacement (described at § 42.205) that is effective immediately or a notice of right to continue in occupancy (described at § 42.207). If the tenant is not issued either of these notices within the prescribed time, he or she shall automatically be eligible for relocation assistance as described at 24 CFR 42.205(b).

(ii) Any tenant required by the owner to move from the property before issuance of a notice as described under paragraph (b)(1)(i) of this section, but after submission of the action grant application to HUD, shall also be issued a notice of displacement, unless he or she was required to move because of his/her breach of an obligation under the terms and conditions of the tenancy. The notice shall be effective on the date the tenant vacated the property. If the tenant chooses to relocate again, the one-year period (see § 42.451(c)) within which the tenant must purchase/rent and occupy a replacement dwelling (if he or she chooses to relocate again) and the 18-month period for filing relocation payment claim(s) shall not begin until after the tenant has been provided a reasonable choice of opportunities to relocate to a comparable replacement dwelling. If the tenant does not choose to relocate again, he/she shall be given at least six months in which to file relocation payment claim(s).

(2) *Issuance of notice to nonresidential tenants.* Wherever the applicant, at its sole discretion, determines it would be equitable to provide relocation assistance to a nonresidential tenant, it may issue the tenant a notice of displacement (described at § 42.205).

(3) *"Initiation of negotiations."* For purposes of determining eligibility for a replacement housing payment under Subpart C of 24 CFR Part 42, the effective date of the notice of displacement shall be considered to be the "initiation of negotiations."

(4) *Replacement housing payment.* A displaced residential tenant who meets the eligibility conditions at § 42.451 is entitled to a replacement housing payment to help him or her rent or buy a replacement dwelling. Any such tenant who chooses to buy a replacement dwelling is entitled to receive a downpayment assistance payment computed under § 42.455. Any such tenant who elects to rent a replacement dwelling is entitled to a rental assistance payment computed in accordance with § 42.453, unless a Public Housing Agency administering the Section 8 Existing Housing Program (24 CFR Part 882) determines, in accordance with the Section 8 eligibility criteria in 24 CFR Part 889 and selection criteria described in its Administrative Plan approved by HUD, that the displaced tenant can be issued a Certificate of Family Participation under that program. Assistance under the Certificate can only occur when (i) the tenant has voluntarily selected a replacement dwelling which meets the housing quality standards and other requirements of that program and (ii) the landlord of the replacement dwelling unit is willing to participate in the program. If the tenant elects to rent a replacement dwelling that cannot be assisted under the Section 8 Existing Housing Program, he/she must be offered the rental assistance payment described at § 42.453. (If an eligible tenant voluntarily selects a rental unit that meets the Section 8 requirements

and the owner is willing to participate in the Existing Housing Program but the tenant refuses the Section 8 assistance, the tenant is not entitled to a rental assistance payment. However, the tenant remains eligible for a moving expense payment computed as described at § 42.303 or § 42.353).

(5) *Maximum rent under notice of right to continue in occupancy.* A residential tenant who receives a notice of right to continue in occupancy (described at § 42.207) is assured, among other things, that he or she will have the right to occupy the property for a period of at least four years after the activity is completed. The terms and conditions of continued occupancy must be set forth in a lease which is offered to the tenant. The lease, including renewal options, if any, shall run for a continuous period of at least four (4) years. The rent under such lease shall be in accordance with this paragraph, and the other terms and conditions of the lease shall be as customary in the jurisdiction. In addition, the lease shall give the tenant the unilateral right to cancel the lease on thirty (30) days advance written notice if he or she wishes to vacate, unless State or local law requires a longer period. In order to benefit from the protections of this rule, the tenant must agree to enter into the lease within a reasonable period after completion of the activity. The procedures for an automatic notice of displacement described at § 42.205(b)(2) and § 42.207(a)(4) shall not apply. In addition, the provisions at § 42.207(a)(2) governing the tenant's maximum monthly housing cost (rent and estimated utility charges) during the four-year period are modified to read as follows:

(i) During the first year of the four-year period, the tenant's monthly housing cost shall be established at a level that does not exceed the greater of:

(A) Twenty-five percent (25%) of the gross income of all adult members of the household, or

(B) 105% of the tenant's monthly housing cost for the unit six months prior to issuance of the notice of right to continue in occupancy. However, this provision does not preclude the owner of the building from requiring the tenant to pay directly to the utility company the cost of utilities which are separately metered after completion of the activity. The cost of any such separately metered, tenant-paid utilities shall be excluded from the 105% computation.

(ii) At the end of the first, second and third years, the monthly housing cost may be increased. The monthly increase, however, shall not exceed the sum of (A) the average monthly increase in the owner's costs for utility charges and property taxes over the previous year, plus (B) five percent (5%) of the monthly contract rent (exclusive of utility costs) charged during the prior year.

(6) *Waiver of right to continue in occupancy.* Nothing in these regulations shall prevent a fully informed tenant, who will not be required to relocate permanently, from waiving his/her right to be issued a notice of right to continue in occupancy. The waiver shall be in a format prescribed by HUD.

(7) *Ineligible tenants.* Under the following circumstances, the tenant is neither entitled to a notice of displacement nor a notice of right to continue in occupancy, nor will he or she receive relocation assistance.

(i) The action grant funded or non-action grant funded activity is limited to residential rehabilitation work for which the cost allocable to the tenant's unit does not exceed $2,500 and the recipient determines that the tenant will not be required to move because of the rehabilitation. In a building of two or more units, the cost allocable to the tenant's unit included the pro rata share of the cost of work done to common elements of the property.

(ii) The tenant moves to the property after submission of the action grant application and is notified prior to occupancy about the proposal and its effect on him/her.

(c) *Responsibility of the Applicant.* The applicant is responsible for assuring compliance with the requirements of paragraph (b) of this section. To pay the cost of relocation assistance, including rental assistance payments, the applicant may use local public funds, action grant or entitlement community development block grant funds (24 CFR Part 570) or the applicant may secure a commitment from any participating party in the action grant program to provide the necessary funds. In order to use block grant funds, the applicant must adopt a written policy in accordance with 24 CFR 570.602(c). Where a notice of right to continue in occupancy is to be provided (see paragraph (b)(4) of this section), the applicant is responsible for making the participating party aware of its obligations.

§ 570.456 Full applications.

(a) *Application scope.* Applicants must submit a separate application for each proposed project as defined in § 570.451(g).

(b) *Scope of the proposed project.* The proposed project must be able to be carried out in a timely fashion, which HUD generally expects not to exceed four years from the date of the announcement of preliminary approval. The applicant shall apply for action grant funds in an amount which, together with other public and private resources, will be adequate to complete the project without additional action grant funds. While a recipient may remain eligible for action grant funding for other projects, no additional funding will be available in the future to complete a project already approved. Should additional funding be required to complete a previously approved project, the applicant, or private developer must provide such funding from another source.

(c) *Submission requirements.* Applications must be submitted on HUD forms and must consist of the following:

(1) Standard Form 424, prescribed by OMB Circular No. A-102 and the urban development action grant application.

(2) A description of the project to be undertaken, how the property involved is controlled, and the nature of the project. The applicant must substantiate the market and economic feasibility of the proposed project, and must analyze the economic benefits which the activities are expected to produce, and must show how the proposed activities will take advantage of unique opportunities to attract private investment. The applicant must identify the public and private participating parties in the proposed project and must clarify the relationship of each to the request for action grant funds. Information provided shall include proposed cost and methods of financing.

(3) A clear description of the use of the action grant funds and a justification for the amount, which must be the least amount necessary to make the project feasible.

(4) The status of environmental review of the proposed project, the steps taken to notify other involved federal agencies if joint funding is requested, and a proposed timetable for the completion of any required environmental actions as described in 24 CFR Part 58.

(5) Documentation of private and public commitments which are necessary for completing the project as outlined in § 570.451 may be in the form of a firm private, firm public or legally binding commitment between the applicant and the public and private entities. No application will be considered feasible and effective unless there is evidence of at least a firm private commitment and if necessary, a firm public commitment.

(6) A statement analyzing the impact of the proposed urban development action grant program on the residents of

any affected residential neighborhood, particularly low- and moderate-income persons and members of minority groups.

(7) A summary of all proposed expenditures to be undertaken to complete the project and a breakdown of the individual public and private expenditures.

(8) A detailed schedule for accomplishing each part of the proposed project.

(9) Maps, aerial photos, site plans or other graphic descriptions of the applicant's jurisdiction, the location of the project, access to the project, surrounding land uses, and related property information. Site plans must show: (i) Present conditions, land uses, and ownership, (ii) proposed private and public development including clear identification of where the action grant funds are proposed to be spent.

(10) A summary of the net new tax revenues to be generated by the project.

(11) Data on anticipated involuntary displacement and relocation of residents by household type, income level, and minority status and/or businesses displaced and jobs lost due to displacement. The following must be included: A description of the efforts made to minimize involuntary displacement, including an analysis of the feasibility of undertaking any rehabilitation of occupied properties in stages in order to minimize displacement; a description of the efforts which will be made to provide opportunities to low- and moderate-income and minority persons to relocate outside areas of low income and minority concentration; and of the opportunities to be provided to displaced persons and businesses to relocate within the project area.

(12) Data specifying the number and types of jobs to be created by the private participating parties, and the proportion of permanent jobs accessible to lower income persons and minorities. The applicant also shall include an employment plan to assure that the jobs created by the proposed project will be available to the long-term unemployed and underemployed. The use of job training programs and consultations with the CETA provider should be detailed.

(13) The record of the applicant in carrying out similar projects. If the applicant has no related experience, it should provide information concerning its abilities to successfully complete the project.

(14) Certifications. The applicant shall submit certifications, in such form as HUD may prescribe, providing assurances that:

(i) Prior to submission of its application, it has met the citizen participation requirements of § 570.456(a) and has made the impact analysis required by § 570.456(b).

(ii) The applicant's chief executive officer and the private participating party must certify that in his or her opinion, the private development would not occur unless the public funding on which the development is based becomes available.

(iii) The applicant's chief executive officer must certify that the action grant funds will not substitute for local public funds which are available and which are committed by line item specified in the applicant's local budget to the project described in the action grant application.

(iv) It possesses legal authority to apply for the grant and to execute the proposed program.

(v) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(vi) Its chief executive officer or other officer of the applicant approved by HUD:

(A) Consents to assume the status of a responsible Federal official for environmental review, decision making and action pursuant to the National Environmental Policy Act of 1969, and the other authorities listed in 24 CFR 58.1(a)(3) insofar as the provisions of such Act or other authorities apply to this part;

(B) Is authorized and consents on behalf of the applicant and himself/herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such official.

(vii) It will comply with the requirements for historic preservation identification and review set forth in Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a, et seq.), regulations of the Advisory Council on Historic Preservation at 36 CFR 801, and any other regulations promulgated pursuant to section 121 of the Housing and Community Development Act of 1974, as amended.

(viii) It has identified all properties, if any, which are included on the National Register of Historic Places and which as determined by the applicant, will be affected by the project; it has identified all other properties, if any, which will be affected by the project and which, as determined by the applicant, may meet the criteria established by the Secretary of Interior for inclusion in the Register, together with the documentation relating to the inclusion of such properties on the Register; and it has determined the affect as determined by the applicant, of the project on the identified properties.

(ix) It will comply with:

(A) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 CFR Part 1;

(B) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284) and implementing regulations;

(C) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto (24 CFR 570.601);

(D) Section 3 of the Housing and Urban Development Act of 1968, as amended, and implementing regulations at 24 CFR Part 135;

(E) Executive Order 11246, as amended by Executive Orders 11375 and 12086 and implementing regulations issued at 41 CFR Chapter 60;

(F) Executive Order 11063, and implementing regulations at 24 CFR Part 107;

(G) Section 504 of the Rehabilitation Act of 1973, as amended, (Pub. L. 93-112) and implementing regulations when published for effect;

(H) The Age Discrimination Act of 1975, as amended, (Pub. L. 94-135) and implementing regulations (when published for effect);

(I) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, implementing regulations at 24 CFR Part 42, and the special provisions of § 570.457 concerning the relocation of residential tenants not covered by the Uniform Act;

(J) The labor standards requirements as set forth in § 570.605 and HUD regulations issued to implement such requirements;

(K) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, (Pub. L. 93-234);

(L) The regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised and A-87 as they relate to the acceptance and use of Federal funds under this Part;

(M) All requirements imposed by HUD concerning special requirements of

law, program requirements and other administrative requirements approved in accordance with OMB Circular No. A-102, Revised:

(x) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(xi) It will comply with the provisions of the Hatch Act which limits the political activity of employees.

(xii) It will give HUD and the Comptroller General through any authorized representatives, access to and the right to examine all records, books, papers, or documents related to the grant.

(xiii) It will insure that the facilities under its ownership, lease, or supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify HUD of the receipt of any communication from the Director of EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

(xiv) It certifies that it has not knowingly and willfully made or used a document or writing containing any false, fictitious, or fraudulent statement or entry. 18 U.S.C. 1001 provides that whoever does so within the jurisdiction of any department or agency of the United States shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(xv) It will not, in carrying out the project, discriminate against any employee because of race, color, religion, sex, handicap, or national origin. It will take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The applicant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this non-discrimination clause. The applicant will in all solicitations or advertisements for employees placed by or on behalf of the applicant state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, handicap or national origin. The applicant will incorporate the foregoing requirements of this paragraph in all of its contracts for project work, except contracts for standard commercial supplies or raw materials or contracts covered under subsection (c)(16)(xiv)(E) of this section, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for work done with funds provided under 24 CFR Part 570.

§ 570.480 Criteria for selection.

(a) *General.* Each calendar quarter, HUD shall review all new proposals received and all proposals pending consideration and shall determine which among such proposals are both feasible and effective. The nature and purpose of the proposed project will determine the extent to which each of the selection criteria in paragraphs (e) through (q) of this section will apply.

(b) *Requirements which must be met to be considered for project selection.* (1) *A firm private commitment.* No projects will be funded under this subpart unless there is a firm private commitment to finance and carry out the proposed project. The private commitment must have a clear, direct relationship to the activities for which funding is being requested.

(2) *Leveraging ratio.* Each project considered for selection for funding must have a leveraging ratio of at least 2.5 to 1.0.

(3) *A firm commitment of public resources.* If a project requires a commitment of other public resources, then it must be a firm public commitment.

(c) *Selection of Projects for Preliminary Funding Approval: Large cities and urban counties.* Projects shall be selected on the following bases:

(1) As the primary criterion, the comparative degree of economic distress among applicants, as measured by the differences in the factors set forth below, which shall be assigned the following relative weights: (i) The percentage of their total housing stock that was built prior to 1940: 0.5; (ii) The extent of poverty: 0.3; and (iii) The degree to which their population growth rate lags behind that of all metropolitan cities: 0.2.

(2) The comparative degree of distress as measured by per capita income, unemployment, and job lag/decline, and

(3) The factors contained in paragraphs (e) through (q) of this section.

(d) *Selection of Projects for Preliminary Funding Approval: Small cities.* Projects shall be selected on the following bases:

(1) As the primary criterion, the comparative degree of economic distress as measured by the distress standards in § 570.452(b)(2);

(2) the factors contained in paragraphs (e) through (q) of this section.

(e) *The impact of the proposed project on the employment base of the community.* In evaluating the employment impact of a proposed project, HUD will consider such factors as the net number of new permanent or temporary jobs to be created within the distressed community.

(1) Specifically HUD will consider whether the project includes a greater number of net new permanent jobs in relation to the amount of action grant funds requested than other type projects. For example, a project creating 1,000 new permanent jobs requiring a million dollar investment of action grant funds will have an action grant cost of $1,000 per job. A similar project having an action grant cost of $10,000 per job will compare less favorably on this factor than the project having a $1,000 cost per job. Job retention and construction jobs will receive some consideration but will be given less weight in selection than the creation of new permanent jobs.

(2) HUD will consider whether the project includes a greater percentage of net new permanent jobs accessible to lower income persons and minorities including those who are unemployed than other similar projects.

(3) HUD will consider whether the project contains a greater number of jobs on a percentage basis for CETA eligible persons (the structurally unemployed, underemployed or for persons from low- and moderate-income households) than other similar projects.

(f) *The amount of the leveraging ratio.* In selecting projects to stimulate economic recovery for funding, HUD will consider whether the amount of private leverage to be generated by a given project is greater than that of other projects. In other words, the higher the leveraging ratio, the more likely it is that the project will be selected for preliminary approval. Recapture of Action Grant funds for a second use increases the private leverage thereby making a project more competitive.

(g) *The impact of the proposed project on the fiscal base of the community.* The

fiscal impact of the proposed project will be measured by the annualized increase in real estate and other taxes such as corporate, sales or income taxes accruing to the applicant's jurisdiction which the applicant will receive due to the proposed project. In selecting projects for funding, HUD will consider whether a given project will generate a greater amount of net new annual tax revenues in relationship to the requested action grant amount than other projects. A project generating a $500,000 annual increase in property taxes for a million dollar action grant investment will fare better on this factor than a project generating a $100,000 increase in property taxes plus a $50,000 increase in city sales tax for a $2 million action grant investment. The respective ratios will be 50 cents per action grant dollar compared to 7.5 cents per action grant dollar. In addition, other revenues which the applicant will receive will be considered.

(h) *The impact of the proposed project on the physical conditions of the community.* (1) HUD will assess the impact of each project in relation to other uses within the applicant's jurisdiction.

(2) HUD will also consider whether or not the private developments in a given proposal include, where possible, a minimum one percent of total development costs for expenditures on the arts, such as sculptures, murals, etc.

(3) The physical impact of the project will be measured by comparing the present physical development of the project area and other areas with the future improvements proposed in the action grant project. For example, if the project is to make those public improvements necessary to attract private industry to the site, then HUD will review the project in terms of the current land use and the potential created by the location of the particular industry at this particular site. HUD will also review the proposal to ascertain that other necessary services are available to support the project. Applicants are expected to consider the quality of the design of the project.

(i) *The impact of the proposed project on the economic conditions of the community.* HUD will consider the effect of the project on the economic base of the community by evaluating such factors as the mitigation of the impact of a major military base closing and the degree to which the proposal will assist areas experiencing a loss of businesses, jobs, and population.

(j) *The likelihood of accomplishing the project in a timely fashion within the total resources which will be provided.* HUD will consider such factors as the status of land assembly, zoning, building permits, and preparation of any necessary historic preservation clearances, as well as the applicants administrative and legal capability for accomplishing the project. HUD will also consider the private participating parties' capability of completing the project within the proposed time schedule. Proposals will be considered to have a lesser degree of feasibility if they involve substantial additional planning, lengthy start-up time, or may be subject to major obstacles due to environmental or legal concerns. HUD expects projects to be completed within a four year period from the date of the announcement of preliminary funding approval.

(k) *The demonstrated performance of the applicant in carrying out housing and community development programs.* Performance shall be evaluated using such considerations as past compliance with HUD regulations and statutory requirements, progress in carrying out programs as planned, and the ability to complete programs in a timely fashion.

(l) *Extent of relocation caused by the project.* (1) Projects which will cause minimal involuntary displacement and disruption of occupants and jobs will be considered more favorably than those involving a substantial amount of involuntary displacement and disruption.

(2) If the project includes activities which generate relocation, HUD will consider how the applicant's relocation plans and processes, including any proposed relocation advisory services, are to operate and whether they provide the opportunity for those displacees to relocate outside areas of low-income or minority concentration.

(3) A project which involves the relocation of industrial and commercial facilities within the applicant's jurisdiction will be reviewed to determine the impact of the relocation on low- and moderate-income and minority persons.

(4) The extent to which displaced businesses and low- and moderate-income residents and minorities will be given the opportunity to relocate to the project area upon completion will be considered.

(m) *Extent of minority business participation.* HUD will more favorably consider projects in which minorities are participants in the project. For example, they may be prime or subcontractors during development, major suppliers of construction goods, or equity investors, or they may participate in the project through leasing, ownership, or rehabilitation of property, on-going vendors and suppliers of goods and services, or as private participating parties.

(n) *Extent of assistance to be made available by the State.* HUD will consider the extent of assistance to be provided by the State in the project either through funding for activities included in the project or special economic incentives that were of assistance in stimulating private investment in the project.

(o) Extent of assistance to be made available by the applicant. HUD will consider the extent to which the applicant will provide funding for activities included in the project either from its own funds or funding available to it from the State or other Federal sources. HUD also will consider other special economic incentives being provided by the applicant to stimulate private investment in the project.

(p) *The impact of the proposed project in increasing energy efficiency or conserving scarce fuels.* HUD will consider more favorably those projects which will increase energy efficiency or conserve scarce fuels (measured in barrels of crude oil saved or the equivalent).

(q) *Secretary's determination that the project requires action grant funds.* Preliminary funding approvals will only be made if the Secretary determines—

(1) based on the assurances made by the chief executive officer of the applicant that the action grant funds will not substitute for local funds § 570.456(12)(iii);

(2) that in his/her opinion, the private development would not occur unless the public funding becomes available pursuant to § 570.456(12)(iii);

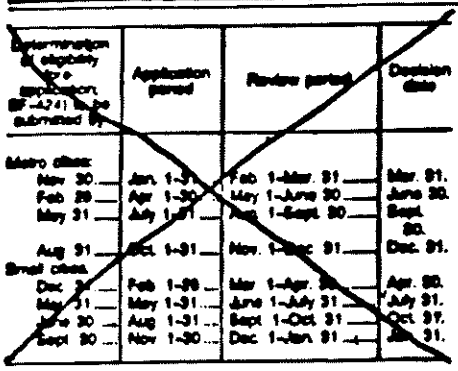
(3) that the statements made by the private participating parties, that but for the receipt of the public funds requested, this project would not be built;

(4) that the grant amount requested is the least amount necessary;

are satisfactory.

§ 570.460 HUD review and action on applications.

(a) *Submission and Review Schedule.* The following chart indicates dates for submission of pre-application requests for determination of eligibility, the full application, HUD review and consultation with the applicant, and the date by which the decision for preliminary approval will be made. Public announcements of preliminary funding approvals will be made shortly after the decision date.



(1) HUD will accept applications from large cities and urban counties postmarked no later than the last day of the month during January, April, July, and October.

(2) HUD will accept applications from small cities postmarked no later than the last day of the month during February, May, August, and November.

(3) However, HUD encourages all cities and urban counties to submit their applications no later than the tenth day of the month in order to allow sufficient time for the community to enact suggestions made by HUD in preliminary reviews.

(4) Applications postmarked after the last day of the month in which they are to be submitted will not be considered until the following quarter.

(5) The original and one copy of the application must be submitted to the appropriate HUD Area Office or Office of Indian Programs and one copy submitted to HUD's Office of Urban Development Action Grants.

(b) *HUD Area Office Review.* Area Offices or the Office of Indian Programs shall forward a copy of each application meeting the criteria of § 570.458 together with a position paper setting forth the Area Office or the Office of Indian Programs comments and the Area Manager's or Director, Office of Indian Programs recommendation to HUD Central Office. HUD Central Office shall evaluate applications on a comparative basis in accordance with the criteria for selection specified in § 570.459.

(c) *Central Office Action on Applications.* (1) Preliminary approval decisions will be made by HUD Central Office within two months after the deadline for submission of applications as shown in paragraph (a) of this section.

(2) Preliminary approval constitutes the first step in a process which may result in a signed grant agreement between the recipient and HUD and legally binding commitments between the recipient and the private sector. The terms of the preliminary approval are not finalized until the recipient and HUD have executed a grant agreement setting forth the terms and conditions of the approved project and the responsibilities of all participating parties. Preliminary approval does not become final until legally binding commitments between the recipient and the private and public participating parties have been submitted and approved by HUD. Release of grant funds is contingent upon the recipient's meeting each and every condition set forth in the grant agreement.

(3) Any application not receiving preliminary funding approval in the first round in which it is accepted for consideration may be reconsidered for funding in the subsequent quarter, if HUD determines there is a likelihood that the project will be funded in the next funding quarter.

(4) Any application not receiving preliminary funding approval after the second round will not receive further consideration, unless HUD and the applicant are actively negotiating the terms of the project. HUD shall use its discretion in making a determination whether to consider the application in a later funding round.

(5) Shortly after the decision date for preliminary approval, the Secretary will notify the applicant in writing of the action taken on its application and if not approved, the conditions under which the application may be reconsidered.

§ 570.461 Post preliminary approval requirements.

(a) *Execution of a grant agreement.* HUD and the recipient must sign a legally binding grant agreement (contract) which finalizes the terms and conditions of the action grant preliminary approval.

(b) *Submission of legally binding private commitments.* Recipients must submit for approval to HUD Central Office evidence of legally binding commitments from participating parties identified in the grant agreement. Copies must also be submitted to the Area Office or Office of Indian Programs. Recipients must also submit an opinion of counsel that the commitments are legally binding under State and local law and conform to the grant agreement executed by HUD and the recipient. The drawdown of grant funds is conditioned upon the written acceptance by HUD of the legally binding commitments as specified in the grant agreement.

(c) *Release of funds pursuant to HUD Environmental Review Procedures.* Recipients must comply with the provisions of § 570.603 concerning the release of funds for projects requiring environmental review. Except for administrative costs, environmental studies and certain relocation costs, no costs which are to be reimbursed or paid with grant funds may be incurred until the environmental requirements have been met. However, the applicant should note that such costs will not be reimbursed if the legally binding commitments are not approved.

(d) *Performance according to schedule.* Action grant funding shall be conditioned upon the performance of the recipient in meeting the schedule set forth in its grant agreement. Failure to meet such schedule may result in the termination of the grant agreement or other remedial action.

(e) *Program Income.* Notwithstanding any other provisions of this part and unless otherwise provided in the grant agreement, program income received by the Recipient under this Subpart prior to completion of construction of all action grant funded activities shall be used to reimburse costs incurred for the Recipient activities. Such income shall be used instead of any draw under the letter of credit to the extent adequate to reimburse costs so incurred. Upon completion of the activities, program income shall be retained by the recipient and governed by the grant agreement. Program income received subsequent to the completion of the action grant funded activities shall be used for the purposes specified in the grant agreement, and as such is considered miscellaneous revenue, the use of which is not governed by the provisions of this part.

(f) *Reporting requirements.* Commencing upon the date the applicant's preliminary funding approval is announced by HUD, applicants shall submit quarterly progress reports as specified by the Secretary of HUD. Failure to file such reports may be a basis for termination of previously approved action grants and shall be considered in the selection of future projects submitted by the applicant under demonstrated performance under § 570.459(e). Copies of the reports shall be submitted to the HUD area office and simultaneously to the Office of Action Grants in HUD Central Office no more than 10 days following the end of each calendar quarter, using the HUD quarterly progress report form.

Reports will be required following the completion of construction of a project, and until project completion is reached. They shall consist of information to be specified at a later date concerning the project's construction costs, its use of program income, tax revenues generated, etc. They shall also include data by job category and pay level, the number of jobs filled by unemployed

and low income persons and by minorities.

§ 570.462 Incurring costs for project activities after preliminary approval.

(a) The use of grant funds is conditioned upon the Recipient incurring costs to be paid in accordance with the grant agreement or as otherwise approved by the Secretary in writing. The incurring of costs to be paid out of grant funds shall be governed by the following:

(1) Except for the cost of application preparation for small cities as specified in § 570.456(a), no costs incurred prior to the preliminary approval date may be paid out of grant funds.

(2) After the preliminary approval date, eligible administrative costs, including but not limited to costs of environmental studies, may be incurred before or after the effective date of the grant agreement (the date it is executed by the Recipient), and the satisfaction of environmental conditions.

(3) Except as permitted by 24 CFR Part 58, no other costs to be paid out of grant funds may be incurred by the recipient or any participating party until after the effective date of the grant agreement, all environmental conditions of 24 CFR Part 58 have been fully satisfied and the Secretary has issued the environmental releases required by 24 CFR Part 58.

(4) After the recipient has satisfied all of the environmental conditions and the Secretary has issued the required environmental releases, then at any time after the preliminary approval date for the project, the recipient and the participating parties may incur eligible costs to be paid out of grant funds.

(b) The authorization to incur costs in paragraph (a) of this section is not an authorization to reimburse those costs and does not mean or imply that such costs will be reimbursed out of grant funds. The recipient and participating parties may voluntarily, at their own risk, and upon their own credit and expense, incur costs as authorized in paragraph (a) of this section, but their authority to reimburse or to be reimbursed out of grant funds shall be governed by the provisions of the grant agreement applicable to the payment of costs and the release of funds by the Secretary.

(c) Neither the Recipient nor any Participating Party shall incur any costs in connection with any activity to be paid for, in whole or in part, with grant funds, even though such costs will not be reimbursed out of grant funds, unless such costs could be incurred pursuant to paragraph (a) of this section if such costs were to be paid out of grant funds.

(d) Prior to the issuance by the Secretary of the environmental releases required by 24 CFR Part 58, the Recipient may not use any funds, including local funds, to take any action with respect to the Project where such action might have an adverse environmental effect, would limit choices among competing alternatives, or might alter the environmental premises on which the pending clearance is based in such a fashion that the validity of the conclusions to be reached would be affected.

(e) Any time after the Preliminary Approval Date, a Participating Party may incur costs for any activity which is not to be paid for, in whole or in part, with grant funds.

§ 570.463 Project amendments and revisions.

(a) *Pre-approval revisions to the application.* Applicants must submit to the HUD Area Office and to Central Office all revisions to the application. A revision is considered significant if it alters the scope, location, or scale of the project or changes the beneficiaries' population.

The applicant must hold at least one public hearing prior to making a significant revision to the application according to the procedures of § 570.454(a).

(b) *Post Preliminary Approval Amendments.* Applicants receiving preliminary approval must submit to the HUD Central Office, a request for approval of any significant amendment. A copy of the request must also be submitted to the Area Office. A significant amendment involves new activities or alterations thereof which will change the scope, location, scale, or beneficiaries of such activities or which, as a result of a number of smaller changes, add up to an amount that exceeds ten percent of the grant. HUD approval of amendments may be granted to those requests which meet all of the following criteria:

(1) New or significantly altered activities must meet the criteria for selection applicable at the time of receipt of the program amendment.

(2) The recipient must have complied with all requirements of this subpart.

(3) The recipient may make amendments other than those requiring prior HUD approval as defined in paragraph (b) of this section but each recipient must notify both the Area and Central Offices of such changes.

§ 570.464 Project closeout.

HUD will advise the recipient to initiate closeout procedures when HUD determines, in consultation with the recipient, that there are no impediments to closeout. Closeout shall be carried out in accordance with § 570.512 and applicable HUD guidelines.

§ 570.465 Applicability of rules and regulations.

The provisions of Subparts A, B, C, J, K, and O of this Part 570 shall apply to this subpart except to the extent that they are modified or augmented by this subpart.

§ 570.466 Specific provisions for cities and urban counties containing pockets of poverty.

Action Grants may also provide funding for economic development and neighborhood revitalization projects targeted to severely distressed areas called Pockets of Poverty in communities which do not meet Action Grant Program distress criteria. Cities and urban counties eligible under this provision will not meet the minimum standards of economic distress defined in § 570.452, but must meet the eligibility criteria of paragraph (a) of this section. In this context, Action Grants for Pockets of Poverty projects are intended to provide increased public and private assistance principally and directly to aid the geographically defined Pocket of Poverty and its low- and moderate-income inhabitants through the provision of jobs, and a revitalized economic environment. Up to, but no more than, 20 percent of all Action Grant assistance made available after October 1, 1979 may be used for Pockets of Poverty. The following paragraphs set forth rules applying only to communities containing pockets of poverty. All other provisions of subpart G apply to these communities except as modified herein.

(a) *Determining Eligibility for Communities Containing Pockets of Poverty.*

(1) *Preapplication Request for a Determination of Eligibility.* Each applicant for Pockets of Poverty assistance must submit a request for a determination of eligibility to the appropriate HUD area office as specified in §§ 570.453 and 570.454 and as modified here. In addition to meeting the criteria of this section, each applicant must have demonstrated reasonable results in providing housing for persons of low- and moderate-income explained in § 570.453(b), must have achieved reasonable results in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups as in 570.453(c), and each applicant must provide comparable services to and for Pockets of Poverty

residents (see paragraph (a)(6) of this section).

(2) *Cities of above 50,000 Population or more and Urban Counties.* A city with a population over 50,000 or urban county which does not meet the minimum standards of physical and economic distress based on data for the community as a whole may qualify as an applicant for Action Grants if it contains a "pocket" consisting of a specifically defined geographic area meeting all of the following criteria:

(i) *Area.* The Pocket of Poverty must be an area composed of contiguous census tracts, enumeration districts or block groups. The defined geographic area must contain at least 10,000 persons or 10 percent of the jurisdiction's population. In other words, a city with a population of 100,000 or more must have a Pocket of at least 10,000. A city of less than 100,000 population must have a Pocket of at least 10 percent of its population. Enumeration districts and block groups with median income levels greater than 120 percent of the median income of the jurisdiction must be excluded in defining the Pocket Poverty.

(ii) *Income.* At least 70 percent of the families and unrelated individuals residing in the Pocket of Poverty must have incomes below 80 percent of the jurisdiction's median income.

(iii) *Poverty.* At least 30 percent of the residents residing in the Pocket of Poverty must have incomes below the national poverty level pursuant to criteria provided by the Office of Management and Budget.

(3) *Small Cities below 50,000 Population.* A small city with a population below 50,000 which does not meet the minimum standards of physical and economic distress based on data for the community as a whole may qualify as an applicant for Action Grants if it contains a specifically defined geographic area meeting all of the following criteria:

(i) *Area.* The Pocket of Poverty must be an area defined by contiguous census tracts, enumeration districts, block groups, or other areas defined by the U.S. Bureau of the Census or for which data certified by the U.S. Bureau of the Census is available. The defined geographic area must contain at least 2,500 persons or 10 percent of the jurisdiction's population, whichever is more. Enumeration districts and block groups with median income levels greater than 120 percent of the median income of the jurisdiction must be excluded in defining the Pocket of Poverty.

(ii) *Income and Poverty.* Small cities must meet the criteria specified in paragraph (a)(2) (ii) and (iii) of this section.

(4) *Use of Census Data in Documenting a Pocket of Poverty.* Applicants should use the 1970 Fifth Count Block Group/Enumeration District computer tape file available from Census summary tape processing centers and from the HUD Area Office, special Census surveys or data verified by the Census and should use comparable data from the 1980 Census as soon as it is available, to establish population, income and poverty levels.

(5) *Certification of the Preapplication Eligibility Data.* The applicant's chief executive officer must certify that to the best of his knowledge the Pocket of Poverty defined in the application meets the population, income and poverty criteria described in this paragraph (a) and that the data provided in the application to establish eligibility are true and correct.

(6) *Comparable Services.* The applicant's chief executive officer must certify in the preapplication request for a determination of eligibility that the applicant is now providing basic services (police, fire, road repair and sanitation) over which it has control to the designated Pocket of Poverty which are at least equivalent to the basic services which it provides to more affluent residential areas of its jurisdiction (areas similar in population numbers to the pocket but with median incomes above the jurisdiction's median income). The certification must indicate that services in the pocket reflect adjustments based on needs resulting from the physical characteristics of the area (e.g., land use pattern, density, housing type).

(i) The preapplication should indicate that the applicant has on file data and analyses comparing basic services, over which it has control, provided to more affluent areas of the jurisdiction to the level and type of basic services which are provided to the Pocket of Poverty. To the extent practicable, the applicant must document that per capita expenditures are at least equivalent in the Pocket of Poverty when compared to the more affluent area. If comparisons of per capita expenditures of basic services are not practicable, the data and analyses on file should use similar units of measurement, which approximate per capita costs, to compare the level and type of basic services provided in the pocket to those provided in more affluent residential areas. For example, if the police department's standard for response to calls requesting assistance in the more affluent areas is "x" minutes, then the applicant must have documentation in its files that it provides the Pocket of Poverty at least this level of service. Similarly, if the standard for sanitation is "x" trash pickups in the more affluent areas, the applicant must have data and analyses in its file that demonstrate that it provides the Pocket of Poverty at least this level of service, etc.

(ii) The data and analyses on file must also indicate that the compared basic services reflect adjustments to the needs resulting from the physical characteristics of the Pocket of Poverty; they must reflect reasonable local efforts to adjust to the service needs resulting from such physical factors as density, housing types, and land use patterns. For example, a relatively high level of density in the pocket would be expected to generate more frequent trash pickups or shorter scheduled trips for trash pickups than in a lower density area.

(b) *Location of the Project and Related Requirements for Communities Containing Pockets of Poverty.* The proposed project must be located within the severely distressed area defined in the eligibility criteria of paragraphs (a) (2) and (3) of this section. However, in limited instances, HUD will approve a project on a site directly adjacent to the Pocket of Poverty if the applicant demonstrates in the application that there is no other suitable site for the project in the Pocket of Poverty. To do this, the applicant must provide in the application data and analyses that indicate that the project would not be economically feasible if located on a site in the pocket or that its location on a site in the pocket would cause harm to low- and moderate-income residents of the pocket and the area's overall economic development. All assisted projects directly adjacent to the pocket must substantially contribute to the development of the pocket, and must meet the minimum requirements described in paragraph (c) of this section.

(c) *Application Submission Factors in Addition to Those of § 570.458*—(1) *General.* Applicants for Action Grants under the Pockets of Poverty provision must meet the requirements of this section in addition to those described in § 570.458.

(2) *Provision of Local Matching Funds.* Applicants applying for Action Grants under Pockets of Poverty must make available a cash contribution, equal to 20 percent of the amount of the grant requested, to be used as a local match. The amount of the grant requested equals the amount of money which the private participating party states is necessary in order to build the

project. The statement that "but for the receipt of the public funds requested * * *" is further described under "firm private commitment" in § 570.451(h). The local share is then calculated by taking 20 percent of the "but for" amount. Such funds may be derived from local funding sources, State funds or from any Federal program which permits the use of financial assistance to meet the non-Federal share requirement of Federal grant-in-aid programs. Revenue bonds, however, may not be used as the source of the local match.

(i) *Use of the Local Match.* The 20 percent share must be in cash and must be spent on direct costs resulting from the project and occurring because of the project. For example, the match may be used to provide sewer and water facilities required by the project or roads specifically needed by the project.

(ii) *Provision of a Firm Commitment of the Local Matching Funds.* If the source of the funds to be used as the match is from own source revenues or locally derived revenues, the chief executive officer must submit evidence with the application that a city or county council resolution or other appropriate action has been taken approving the allocation of these funds. If the source of such funds is a State or Federal agency which must approve their utilization, then a letter of commitment from that agency must be submitted with the application.

(3) *Direct Benefits to the Low- and Moderate-Income Inhabitants of the Pocket of Poverty.* Applicants must demonstrate that the proposed project will provide direct benefits to the low- and moderate-income residents of the Pocket of Poverty and substantially contribute to the physical and economic development of the Pocket of Poverty, particularly those areas occupied by low- and moderate-income residents of the pocket of poverty. Applications must address the following categories of benefits and impacts.

(i) *Employment Opportunities.* The application must describe the number and, to the extent possible, the types of new jobs (construction and permanent) which will be provided to the low- and moderate-income residents of the Pocket of Poverty as a direct result of the proposed project. If the application calls for job training programs (such as those related to the CETA program) or job recruiting services for the pocket's residents, then such proposed activities must be clearly and fully explained. HUD requires applicants to ensure that at least 75 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income persons and that at least 51 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income residents from the pocket. HUD encourages applicants to ensure that at least 20 percent of all permanent jobs are filled by persons from the pocket qualified to participate in the CETA program on a continuous basis. HUD requires all applicants to continuously use best efforts to ensure that at least 75 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income persons and that at least 51 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income residents from the pocket. The application should clearly describe how the applicant intends to meet initial and continuous job requirements. Applicants are referred to § 570.481(b) concerning legally binding commitments. Private participating parties must meet these employment requirements in the aggregate. To enable the private participants to do so, lease agreements executed by a private participating party shall include: (i) Provisions requiring lessees to follow hiring practices which the private participating party has determined will enable it to meet these requirements in the aggregate and (ii) provisions which will enable the private participating party to declare a default under the lease agreement if the lessees do not follow such practices.

(ii) *Services and Physical Improvements.* If relevant, the application should describe the services and physical improvements to be provided by the project and their specific relationship to the needs of the low- and moderate-income inhabitants of the Pocket of Poverty.

(iii) *Repayment by Private Sector.* HUD requires the applicant to utilize proceeds from any repayment of Action Grant funds or local match funds by the private sector for the direct benefit of low- and moderate-income residents of the pocket's area.

(iv) *Tax Increment.* HUD encourages the applicant to allocate local revenues equal to a significant portion of the applicant's tax increment (net increase in property tax revenues over current revenues) resulting from the project to the Pocket of Poverty for economic or community development purposes within the pocket, particularly the areas occupied by low- and moderate-income residents of the Pocket of Poverty. The activities for which the funds may be used must directly benefit the low- and moderate-income residents of the Pocket of Poverty. The funds may not be used to meet comparable service requirements defined in paragraph (a)(7) of this section or to substitute for applicant resources normally made available to the pocket's area or their residents.

(v) *Minority Entrepreneurs.* HUD encourages the applicant to provide opportunities for minority entrepreneurs, including minority entrepreneurs from the pockets, in all aspects of the project (planning, design, construction and operation of the project).

(vi) *Minority Jobs.* HUD encourages the applicant to provide job opportunity to low- and moderate-income minorities equivalent, at a minimum, to their proportion of the population in the pocket.

(d) *Criteria for Project Selection for Communities Containing Pockets of Poverty*—(1) *General.* Applications from eligible Pockets of Poverty communities will be considered separately from those of distressed communities. However, each project submitted by jurisdictions eligible on the basis of its Pockets of Poverty must compare favorably on its own merits with any other Action Grant project to be selected for funding. Criteria for the selection of projects for preliminary funding approval are set forth in § 570.459 (a) and (b), and (e) through (r) with the additions and modifications set forth in paragraph (d)(2) of this section.

(2) *Additional Factors for the Selection of Projects for Funding.* HUD shall in each calendar quarter review all proposals received and pending consideration and shall determine which among such proposals shall receive preliminary funding approval on the following bases:

(i) The comparative degree of distress in the Pocket of Poverty as measured by the percent of residents below the national poverty level and the percent of residents with incomes below 80 percent of the median income.

(ii) The comparative degree of benefits to be provided to low- and moderate-income persons residing in the area. For example, given two equally feasible and effective proposals, HUD will select that proposal which provides the greatest overall benefits to low- and moderate-income persons living in the pocket of poverty.

(iii) HUD shall also consider:

(A) The extent to which the project provides jobs to CETA-eligible residents of the Pocket of Poverty;

(B) the extent to which a significant portion of the tax increment, or an equivalent thereof, is allocated for economic or community development purposes within the pocket for activities

which directly benefit low- and moderate-income residents of the pocket;

(C) the extent to which low- and moderate-income minorities are employed in the project in excess of their proportion of the population of the Pocket of Poverty;

(D) the extent to which minority entrepreneurs, including minority entrepreneurs from the pocket, are provided opportunities to participate in all phases of the project; and

(E) the extent of support for the project from bona fide groups representing low- and moderate-income residents of the pocket and from pocket's residents themselves.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

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